

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

FOOTBALL NORTHWEST, LLC d/b/a
SEATTLE SEAHAWKS and NATIONAL
FOOTBALL LEAGUE MANAGEMENT
COUNCIL,

Plaintiffs,

vs.

MALIK McDOWELL and NATIONAL
FOOTBALL LEAGUE PLAYERS
ASSOCIATION,

Defendants.

Case No.

Hon.

COMPLAINT TO CONFIRM AN ARBITRATION AWARD

Pursuant to Section 301 of the Labor Management Relations Act, 29 U.S.C. §§ 185 et seq., Plaintiffs Seattle Seahawks (“Seahawks”) and National Football League Management Council (“NFLMC”) submit this Complaint to Confirm the Arbitration Award (the “Complaint” or “Compl.”) against Defendants Malik McDowell and the National Football League Players Association (“NFLPA”) arising out of an arbitration conducted before NFL System Arbitrator Professor Stephen B. Burbank on February 27, 2019 in which Professor Burbank found that Mr. McDowell breached paragraph 3 of his NFL Player Contract and, as a result of

his breach, was ordered to pay the Seattle Seahawks \$799,238 within 30 days. As Mr. McDowell has yet to pay any of this amount, the Seahawks seek entry of judgment in conformity of the Award pursuant to Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185.

THE PARTIES

1. The NATIONAL FOOTBALL LEAGUE MANAGEMENT COUNCIL is the sole and exclusive bargaining representative of present and future employer member clubs of the NFL. The NFLMC's principal place of business is in New York, New York.

2. The SEATTLE SEAHAWKS is a National Football League team incorporated in Washington as Football Northwest, LLC d/b/a the Seattle Seahawks.

3. Defendant MALIK MCDOWELL is a citizen of Michigan and a resident of Farmington Hills, Michigan.

4. Defendant NATIONAL FOOTBALL LEAGUE PLAYERS ASSOCIATION is the exclusive bargaining representative of all NFL Players. The NFLPA represents players in the Eastern District of Michigan, and some of its members, including Defendant Mr. McDowell, reside in this judicial district.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this matter under 28 U.S.C. § 1331 and 29 U.S.C. § 185.

6. Venue is proper in this District pursuant to 29 U.S.C. § 185(a) and 28 U.S.C. § 1391.

FACTS

7. This is an action commenced pursuant to Section 301 of the Labor Management Relations Act, 29 U.S.C. §§ 185 et seq., for an order and judgment confirming an arbitral award dated February 27, 2019 (the “Order”) issued pursuant to the National Football League Collective Bargaining Agreement (“CBA”) by NFL System Arbitrator Professor Stephen B. Burbank. (See Exhibit A.)

8. The parties are bound by the CBA negotiated between the NFLMC (on behalf of the NFL member clubs) and the NFLPA (on behalf of all NFL players). Relevant portions of the CBA are attached hereto as Exhibit C.

9. The CBA mandates that disputes between the parties involving the forfeiture of signing bonuses be submitted to arbitration before a mutually selected System Arbitrator. (See Exhibit C Arts. 4, 15.)

10. All NFL Players employed by a member club must enter into an NFL Player Contract, which is incorporated into the CBA. (See Exhibit C Art. 4 & App. A.)

11. Mr. McDowell entered into an NFL Player Contract with the Seahawks on May 30, 2017 (the “McDowell Contract”). (See Exhibit B.) This Complaint arises out of Mr. McDowell’s breach of the McDowell Contract.

12. Paragraph 3 of the McDowell Contract read:

Other Activities. Without prior written consent of the Club, **Player will not . . . engage in any activity other than football which may involve a significant risk of personal injury.** (*Id.* (emphasis added).)

13. The McDowell Contract also contained a Signing Bonus Addendum that required the Club to pay Mr. McDowell a Signing Bonus of \$3,198,476, which would be paid in four installments. (*Id.*) The Seahawks paid Mr. McDowell \$1,598,476 on or before June 2, 2017 and \$800,000 on July 14, 2017, for a total of \$2,398,476. The Addendum stated, “Player shall be subject to forfeiture of Signing Bonus or Salary to the maximum extent permitted under Article 4, Section 9 of the NFL Collective Bargaining Agreement, dated August 4, 2011.” (*Id.*)

14. Pursuant to Article 4, Section 9 of the CBA, a player who “is unavailable to the team due to a nonfootball injury that resulted from a material breach of paragraph 3 of his NFL Player Contract” shall be required to forfeit

Signing Bonus for each League Year in which that breach occurs. (See Exhibit C Art. 4 Section 9.)

15. In July of 2017, Mr. McDowell was involved in an accident while riding an All-Terrain Vehicle. As a result of the injuries he sustained in that accident, Mr. McDowell was unable to perform the services required by his NFL Player Contract during 2017 and 2018 seasons.

16. Mr. McDowell's breach of paragraph 3 of the McDowell Contract deprived the Seahawks of his services under that contract during the 2017 and 2018 seasons.

17. Accordingly, pursuant to Article 15 Section 5 of the CBA (see Exhibit C Art. 15), the NFLMC, on behalf of the Seahawks, filed the underlying arbitration proceeding against Mr. McDowell on July 20, 2018 seeking forfeiture of his signing bonus as a result of Mr. McDowell's breach of paragraph 3 of the McDowell Contract (the "Initiation Letter"). (See Exhibit D.) Mr. McDowell was represented by the NFLPA in the arbitration proceeding.

18. After negotiations with Mr. McDowell and NFLPA, the Seahawks amended their arbitration demand to seek only forfeiture of Mr. McDowell's 2017 and 2018 Signing Bonus Allocations (the "Amended Initiation Letter"). (See Exhibit E.) Mr. McDowell represented that he would not contest that he had forfeited his 2017 and 2018 Signing Bonus Allocations.

19. Accordingly, the NFLMC, on behalf of the Seahawks, filed a stipulated Proposed Order with System Arbitrator Burbank finding that Mr. McDowell had forfeited his right to the 2017 and 2018 Signing Bonus Allocations (totaling \$1,599,238) and requiring Mr. McDowell to return \$799,238 to the Seahawks, which amount represents the \$1,599,238 forfeited, less the \$800,000 of the Signing Bonus that the Club withheld after Mr. McDowell's accident (the "Proposed Order").

20. System Arbitrator Burbank conducted a telephonic hearing on February 27, 2019 to address the Proposed Order submitted for his approval. (*See Exhibit F*, Excerpts of Hearing Transcript ("Hearing Tr.") at 6:25-7:6.)

21. System Arbitrator Burbank reviewed the Proposed Order with Mr. McDowell, who was represented by counsel, and asked him to confirm he did not contest the forfeiture of the 2017 and 2018 Signing Bonus Allocations. Mr. McDowell confirmed he did not contest the forfeiture. (*Id.* at 7:7-10.)

A. The Arbitration Award

22. Following the telephonic hearing, System Arbitrator Burbank issued the Order regarding Mr. McDowell's breach of contract finding that:

- a. Through his actions in July of 2017, McDowell breached Paragraph 3 of the McDowell Contract due to his engagement in an activity that may involve significant risk of personal injury and which did in fact cause him to sustain a personal

injury that prevented him from rendering playing services required by his contract during the 2017 and 2018 seasons. (*Id.* ¶ 7.)

- b. To date, McDowell has forfeited his Signing Bonus Allocations for 2017 and 2018 under Article 4, Section 9 of the CBA. The Signing Bonus is allocated at \$799,619 per year. As a result, McDowell has forfeited \$1,599,238. McDowell is currently required to repay the Seahawks \$799,238, which amount represents the \$1,599,238 forfeited, less the \$800,000 of the Signing Bonus that the Club withheld. (*Id.* ¶ 10.)

23. With respect to damages, System Arbitrator Burbank found that:

McDowell is Ordered to pay to the Seahawks \$799,238, which amount represents the 2017 and 2018 Signing Bonus Allocations forfeited by McDowell (totaling \$1,599,238), less the \$800,000 of the Signing Bonus that the Club withheld, within thirty (30) days of this Order. (*Id.* p. 4 ¶ 1.)

24. Under Article 15, Section 8(a) of the CBA, Mr. McDowell had ten days to appeal the Order to the Appeals Panel. (*See Exhibit C* Art. 15.) Mr. McDowell did not appeal the Order within ten days; therefore System Arbitrator Burbank's decision constitutes the "full, final and complete disposition of the dispute." (*Id.*)

25. Mr. McDowell has not yet paid any of the \$799,238 he was ordered to pay to the Seahawks, and more than 30 days have passed since the Order was entered.

COUNT 1 – CONFIRMATION OF ARBITRATION AWARD

26. The Seahawks repeat and re-allege the foregoing as if set forth fully herein.

27. The McDowell Contract is governed by the provisions of Section 301 of the Labor Management Relations Act, 29 U.S.C. §§ 185 et seq. (See Exhibit B.)

28. Under the terms of the NFL CBA, System Arbitrator Burbank was validly appointed to serve as System Arbitrator in this proceeding, and his Order was issued in full accord with the NFL CBA and interprets the terms of the CBA and the McDowell Contract.

29. The Order has not been vacated, modified, or corrected.

30. Mr. McDowell was offered a fundamentally fair hearing during which System Arbitrator Burbank reviewed the Proposed Order once again with him. Mr. McDowell then stated on the record that he did not contest entry of the award. (See Exhibit F, Hearing Tr. at 6:25-7:10.)

31. Mr. McDowell did not appeal the Order within the ten-day period provided under the CBA.

32. Mr. McDowell has not paid any of the \$799,238 he was ordered to pay to the Seahawks, and more than 30 days have passed since the Order was entered by System Arbitrator Burbank.

33. As a result, the Seahawks are entitled to confirmation and enforcement of the Order and entry of judgment in conformity with the Order pursuant to Section 301 of the Labor Management Relations Act, 29 U.S.C. §§ 185 et seq.

RELIEF REQUESTED

34. In light of the foregoing, Plaintiffs respectfully request that the Court:
- a. Confirm and enforce the Order;
 - b. Require Mr. McDowell to pay the Seahawks \$799,238 within 10 days of confirmation of the Order;
 - c. Award the Seahawks interest accrued from the date of the Order through the date of this Court's judgment;
 - d. Award the Seahawks additional interest from the date of this Court's judgment through the date on which full payment is received;
 - e. Award the Seahawks costs incurred in this confirmation proceeding; and
 - f. Provide any other relief that this Court deems necessary and proper in the interests of justice.

Dated: May 29, 2019

Respectfully submitted,

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